



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
Southwest Region  
501 West Ocean Boulevard, Suite 4200  
Long Beach, California 90802- 4213

**JAN 31 2007**

In response, refer to:  
151404SWR2004PR13870:MLD

Mark A. Prescott  
Chief, Deepwater Ports Standards Division  
U.S. Coast Guard  
2100 Second Street, S.W.  
Washington, D.C. 20593-0001

Dear Chief Prescott:

NOAA's National Marine Fisheries Service (NMFS) has reviewed your letter dated December 21, 2006, requesting NMFS' concurrence with the U.S. Coast Guard's (USCG) determination under Section 7 of the Endangered Species Act (ESA) (16 U.S.C. § 1536(a)(2)) on the effects of the construction and operation of the proposed Cabrillo Port Deepwater Port on listed species. The proposed Deepwater Port would be located approximately 14 miles off Ventura County, on the shoreward side of the Southern California Bight (SCB). The applicant, BHP Billiton, has proposed a floating, storage, and regasification unit for transforming liquefied natural gas (LNG) back to its gaseous state. USCG has requested that NMFS concur with its determination that "this project will not likely affect the continued existence of any threatened or endangered species or lead to the destruction of critical habitat" (Page 2 of USCG December 21, 2006 letter).

The December 21, 2006, letter disagrees with NMFS' recommendation in our letter dated July 14, 2006, that the Region of Influence (ROI) be expanded beyond the SCB to include waters from the project location to the U.S. Exclusive Economic Zone (EEZ). As stated in the December 21, 2006, letter, and in the Draft Environmental Impact Statement/Report (EIS/EIR) and the Revised Draft EIR, the possibility of impacts to marine mammals and sea turtles from ship strikes and possible avoidance behavior by these animals in response to increase ship traffic associated with the project does exist. NMFS supports USCG's recommendation that any license that is granted will include a condition that all LNG carriers transit in the specific east-west transit lanes within the EEZ. However, the action area of the project should include all areas to be affected directly or indirectly by the action, and not merely the immediate area involved in the action (50 CFR 402.02). The action area is considered to be all terrestrial and aquatic environments affected by the construction and operation of the LNG terminal and pipelines. The marine portion of the action area should therefore be considered to extend from the marine basin of the Cabrillo Port LNG terminal including all LNG traffic lanes within the EEZ of the Pacific Ocean.

In the December 21, 2006, letter USCG states that noise impacts associated with the construction of the proposed project may result in both Level A and Level B takes under the Marine Mammal Protection Act (MMPA). Given this determination, NMFS recommends that USCG and/or the applicant apply for a Letter of Authorization (LOA) under the MMPA for construction operations. USCG also states that noise impacts associated with the operations of



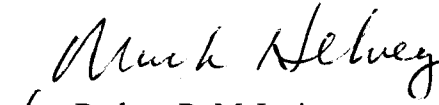
the proposed project may result in Level B takes under the MMPA. NMFS recommends that USCG and/or the applicant apply for either an Incidental Harassment Authorization (IHA) or LOA under the MMPA for operations of the proposed project. In addition, the December 21, 2006, letter states that "Noise from construction of pipelines under certain scenarios may be likely to adversely affect some marine mammal species." These takes associated with construction and/or operations, may include ESA-listed marine mammal species. Typically, any noise impacts to marine mammals are also likely to impact sea turtles. A take of an ESA-listed species is an adverse effect, therefore, we cannot concur, at this time, with USCG's determination on Page 2 of the December 21, 2006, letter that this project is not likely to adversely affect ESA-listed marine mammal or sea turtle species.

Mitigation and monitoring plans (Plans) have not yet been developed at this stage of the Deepwater Port licensing process because the license may not be granted. Although the Draft EIS/EIR and Revised EIR describe some of the impacts that may occur as a result of the project and state that Plans will be prepared, details on proposed measures to minimize or avoid harm to protected species were not provided to NMFS. NMFS cannot concur with USCG's findings without having the opportunity to review proposed mitigation and monitoring protocols. NMFS would like to accept USCG's offer to participate in the development of these mitigation and monitoring protocols and looks forward to working together on the Plans. Please note that these Plans will need to be available in order to proceed with either the LOA or IHA application process under the MMPA.

The December 21, 2006, letter states that any decommissioning will be included in a separate project-specific document, pursuant to the National Environmental Policy Act. NMFS supports USCG's recommendation to include a licensing condition for any license granted that will ban the use of explosives during decommissioning. As stated in the December 21, 2006, letter in advance of any decommissioning that is undertaken, USCG or applicant, shall provide NMFS with the opportunity to review the proposed decommissioning process to identify potential impacts to protected species.

These comments are provided in accordance with the ESA and MMPA. We appreciate your efforts to comply with Federal regulations and to conserve protected species. As described in this letter, additional information is required before NMFS can proceed with the consultation for this project. Please contact Monica DeAngelis at 562-980-3232 or [Monica.DeAngelis@noaa.gov](mailto:Monica.DeAngelis@noaa.gov), if you have any questions concerning this letter or if you require additional information.

Sincerely,

  
for Rodney R. McInnis  
Regional Administrator